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Supreme Court of the United States

OCTOBER TERM 1941.

No. 

117

S. J. SUMMERS, C. E. GAMBLE,
MRS. A. C. ASTON, ET AL.,
PETITIONERS,

vs.

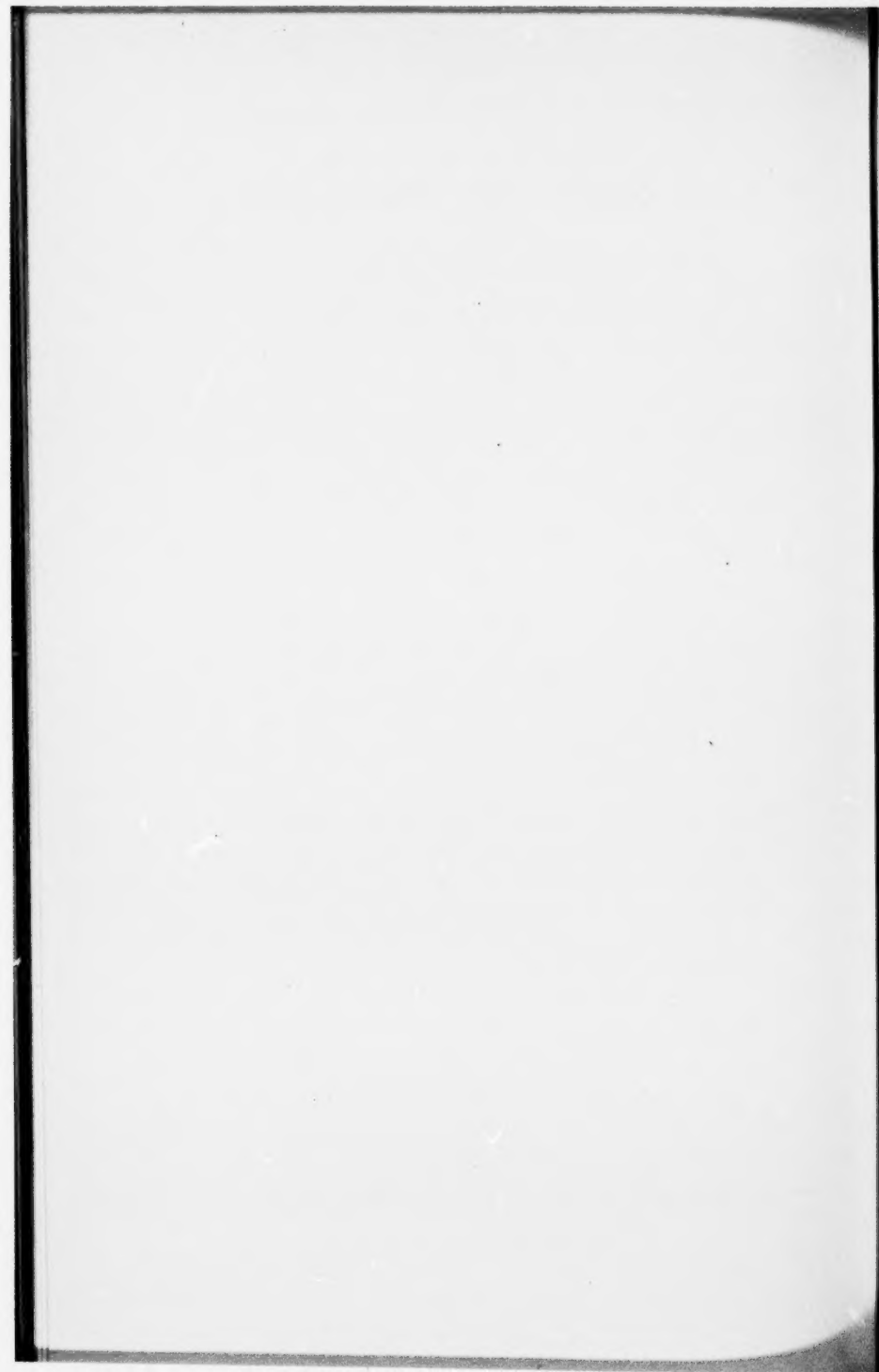
CLARE PURCELL, WILLIAM T. WATKINS,
J. LOYD DECELL, ET AL.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT,

and

BRIEF IN SUPPORT THEREOF.

COLLINS DENNY, JR.,
C. T. GRAYDON,
Counsel for Petitioners.



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RESPONDENTS.

**PETITION FOR A WRIT OF CERTIORARI
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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, S. J. Summers, C. E. Gamble, Mrs. A. C. Aston, Rev. C. P. Chewning, J. M. Huggins, L. A. Manning, Jr., G. G. Pike, Mrs. S. J. Summers and Miss Mildred Huggins, respectfully show unto your Honors the following:

A.

REFERENCES REQUIRED BY RULES 12 AND 38.

The opinion of the Court below (R. 74) rendered on March 9, 1942, is to be found in 126 F. 2d 390. Its decree

(R. 81) was entered on the same date. The Jurisdictional Authority of this Court to review the decree is Judicial Code, Sec. 240 (a), as amended; U.S.C. Title 28, Sec. 347 (a).

B.

QUESTION PRESENTED.

The sole question presented is: Did the District Court of the United States for the Eastern District of South Carolina have jurisdiction to consider the complaint filed by respondents?

C.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

The origin of this case lies in the alleged union of the "Methodist Episcopal Church", the "Methodist Episcopal Church, South" and the "Methodist Protestant Church" into a new ecclesiastical society, "The Methodist Church".

Respondents, non-residents of South Carolina, are eight Bishops of The Methodist Church, and formerly were Bishops of the Methodist Episcopal Church, South. They sue as "Members of the Methodist Church * * * on Behalf of Themselves and All of the Members of Said Church and Officially as Bishops of Said Church Representing Themselves and All Other Members of Said Church as a Class" (R. 71).

Petitioners, residents of South Carolina, are members of the "Layman's Organization for the Preservation of the Southern Methodist Church", which called a meeting of the members of the Methodist Episcopal Church, South, at which a provisional plan of organization for the purpose of continuing the Methodist Episcopal Church, South, was adopted, whereby there was created a voluntary association under the name "South Carolina Conference of the Meth-

odist Episcopal Church, South". Petitioners are officers of this Conference (R. 5). They are sued "Individually and as Officers and Members of an Unincorporated Society, Holding Itself Out to Be the 'South Carolina Conference of the Methodist Episcopal Church, South', and as Representing All Other Persons Similarly Situated, All Residing in the State of South Carolina" (R. 71).

The District Court, on motion, dismissed the Complaint for lack of jurisdiction (R. 24, et seq). On appeal, the District Court was reversed and the cause remanded (R. 81).

The material allegations of the Complaint and Amended Complaint, in addition to those set forth above, are, in brief:

That the membership of The Methodist Church constitutes a class and that respondents file the Complaint on their own behalf and as representatives of the class (R. 4).

That the aim of the "South Carolina Conference of the Methodist Episcopal Church, South", and of the said "Laymen's Organization" is the perpetuation of the Methodist Episcopal Church, South, under that name, without authority of The Methodist Church (R. 5, 6).

That by appropriate action each of the three constituent Churches adopted a Plan of Union, and authorized the consummation thereof at a Uniting Conference, at which Uniting Conference the union was consummated, and "The Methodist Church" was brought into existence.

That The Methodist Church has immense property interests (R. 46). That, at the time of the Union, the Methodist Episcopal Church, South, had large property interests, held for its use and benefit by trustees, boards, etc. (R. 52); that, as a general rule, local congregational properties i. e. houses of worship of the Methodist Episcopal Church, South, were held by individual trustees as a place of worship for the use of the ministry and membership of said Church, subject to its Discipline, usage and ministerial appointment, and that the other properties and funds were

held by corporations, commissions and other agencies under charters or other instruments using the name "Methodist Episcopal Church, South", and are now held by The Methodist Church under such charters and instruments, as successor to the Methodist Episcopal Church, South (R. 52).

That, in anticipation of the Union and subsequent thereto, certain members of the Methodist Episcopal Church, South, claiming that the Union was illegal, null and void, refused to adhere to The Methodist Church, and claimed that those thus refusing constituted the Methodist Episcopal Church, South, which they contend still exists (R. 53); that for the purpose of bringing local congregational properties under the control of the Conference above mentioned (R. 54), certain deeds were executed in South Carolina alienating properties from the lawful owners and attempting to vest title thereto in Trustees for the use and benefit of the membership of the respective local congregations, free and independent of The Methodist Church, and that the grantees in said deeds have attempted to prevent the duly appointed ministers of The Methodist Church from performing their duties as pastors therein; that in order to cancel said deeds and secure injunctions, suits have been brought in the Courts of South Carolina, and that the value of the property so attempted to be alienated greatly exceeds \$3,000.00; that such deeds have been executed and such suits brought in connection with former churches of the Methodist Episcopal Church, South, in South Carolina at Florence, Clinton, Springfield, Turbeville, Timmons ville, Leo, Ridgefield and Fork and that the value of these properties exceeds \$50,000.00 (R. 57).

That the three constituent churches, in forming the Methodist Church, did not abandon the name, "Methodist Episcopal Church, South," but that The Methodist Church is entitled to the exclusive use of that name; that its use "by a rival organization would cast a cloud upon the title to every piece of property held in the name of, or by trustees, for the use of the Methodist Episcopal Church, South, at the

time of said Union" (R. 54), would seriously injure The Methodist Church "by the consequent impairment of its good will" (R. 54), would confuse ignorant persons and promote dissension (R. 55), would constitute "unfair competition", and tend to create doubt and confusion in the minds of those desiring to make donations (R. 56).

Respondents pray for a declaratory judgment in two respects: First, that the Union of the three churches was legal and valid; and Second, that The Methodist Church is the legal successor to all the property and rights formerly held by the Methodist Episcopal Church, South, including the exclusive right to the use of its name. They also seek an injunction enjoining petitioners and those acting with them from using the names "Methodist Episcopal Church, South" and "Southern Methodist Church" or any similar name, as the name of any Church or religious society organized or existing independent of The Methodist Church (R. 7).

There is no allegation that any one of the eight Bishops who filed the Complaint, or all the Bishops, has or have any cognizable right of property, legal or equitable, in any property located in South Carolina or elsewhere; nor that any one of them is a trustee of any trust, a director or officer of any corporation, or a member of any commission or agency that owns property; nor that any one of them is a beneficiary of any trust or that any property is held in any respect for the use or benefit of any one of the eight Bishops or of all the Bishops.

Save for the reference to the eight congregational properties in South Carolina concerning which deeds of alienation have been given and concerning which proceedings were begun in State Courts prior to the institution of this proceeding, the Complaint points out no property in South Carolina or elsewhere—it simply alleges that property of great value, located at undetermined points, is owned by unnamed corporations, trustees, etc.

The Bill of Complaint in the case of *Turberville, et al. v.*

Morris, et al., pending in the Court of Common Pleas for Clarendon County, South Carolina, and involving the Pine Grove Church at Turbeville, South Carolina, which case has now been adjudicated by said Court of Common Pleas, and is being appealed to the Supreme Court of South Carolina, was filed as typical of the Complaints filed in the eight separate suits pending before the State Courts of South Carolina (R. 8 et seq.).

These State cases are broad class actions, brought by ministerial and lay members of The Methodist Church against members of the Methodist Episcopal Church, South, who have declined to affiliate with The Methodist Church, and who seek to preserve and perpetuate the Methodist Episcopal Church, South, and who have joined with others in said "Layman's Organization". In each there is alleged a deed alienating certain real estate therein fully described; the validity of the Union is alleged and it is asserted that The Methodist Church is the successor of the three constituent churches and holds and enjoys the properties of the three constituent churches and has legal title to the name "Methodist Episcopal Church, South". In each, there is sought a declaration that The Methodist Church is entitled to the use and possession of the particular real estate alleged in the Complaint; there is a prayer for the cancellation of the alienation deed; there is a prayer for an adjudication that The Methodist Church owns the name "Methodist Episcopal Church, South" and that the defendants and all persons in like situation be enjoined from using that name, or a name of like import.

Save, therefore, as the instant proceeding is instituted by certain Bishops of The Methodist Church, on behalf of all members of that Church, against officials of the "South Carolina Conference of the Methodist Episcopal Church, South" as representing all others in South Carolina similarly situated, whereas the State cases are brought by certain ministers and by certain members of a local congregation on behalf of the whole membership of The Methodist

Church, against certain lay members of that congregation and all others who seek to perpetuate the Methodist Episcopal Church, South; and save as each of the State cases specifically alleges the particular piece of property involved, whereas the instant case, taken in its most favorable light to the Bishops, alleges, in such fashion as a court can consider, only the eight pieces of property involved in the several State cases, these proceedings are identical.

The jurisdictional points raised by petitioners are briefly (R. 21, 26, 75) :

1. That the Complaint raises no rights of property, save perhaps the eight houses of worship in South Carolina, each of which is the specific subject of an action pending in a state court. That, as the *res* of each of these eight properties is the subject of an *in rem* action in a state court of competent jurisdiction, the Federal Court cannot consider, or make adjudication, concerning any one of those eight properties, and the value thereof cannot be considered in determining whether there is in controversy the required jurisdictional amount.

2. That the Complaint does not raise questions which involve the jurisdictional sum of an amount in excess of \$3000.00.

3. That the Complaint, accordingly, presents simply an ecclesiastical question; and no court has jurisdiction to pass upon such a question, save as its settlement may be essential to the adjudication of a property right.

The Circuit Court of Appeals was of opinion that the State court had exclusive jurisdiction over the eight properties involved in the State cases, but that the pendency of those suits went no further than to preclude the District Court from dealing with those eight properties. It found that when those suits were instituted, there was no state or sectional organization of persons seeking to perpetuate the Methodist Episcopal Church, South, but that there was merely an attempt on the part of some persons in local congregations to withhold local property from the control of

the United Church (R. 79). In this factual finding it erred, for the Complaint in the instant case shows that the "South Carolina Conference of the Methodist Episcopal Church, South", grew out of and had the same purpose as the "Layman's Organization for the Preservation of the Southern Methodist Church", and the Complaint in the Pine Grove Case expressly alleges that the defendants in that case are members of the "Layman's Organization" just as it is alleged in the instant case that petitioners are also members of the "Layman's Organization".

The Circuit Court of Appeals found that the allegation of vast properties owned by undesignated trusts, corporations and agencies for the benefit of undesignated persons, was sufficient to bring those properties, apparently without reference to the charters and trust instruments, before the Court for adjudication, and that the value thereof furnished the amount in controversy. Further, the Circuit Court of Appeals says of the allegations that the value of the use of the name "Methodist Episcopal Church, South" exceeds the jurisdictional amount and that the damage to The Methodist Church of the use of that name by another Church would exceed that amount, are not denied in the Answer. These allegations are made in the amended Complaint (P. 7, 8—see Manuscript Record, p. 43-44), which was filed on the eve of argument. To that amended Complaint, no specific answer was filed, but paragraph No. 2 of the Answer contained a specific denial of every allegation of the Complaint not specifically admitted or modified and admitted as modified. Having made this general denial and having answered in detail a Complaint 24 pages in length, it was not deemed necessary to answer additional allegation in an amended Complaint which added little to the original.

D.

REASONS RELIED ON FOR THE ALLOWANCE
OF THE WRIT.

1. While it is sought by this petition to bring up for review an interlocutory order, that order decides a question of Federal law which should be decided by this Court. It is believed that the question presented is so fundamental and is also so important to such a large number of the people that the filing and granting of this petition is warranted.

2. The several state courts of South Carolina have acquired jurisdiction over the specific properties which are the *res* of those suits, and as a Federal Court cannot interfere with that jurisdiction, the value of those properties cannot be considered in determining the amount in controversy.

3. The Methodist Church is a voluntary association. It owns no property, is not capable of owning property, and the persons who sue as members of that Church and who found their complaint on alleged property interests of the Church proceed on a fallacy. What are loosely and generally referred to as "Church Properties" are owned by corporations and trusts. In order that a person or group of persons may institute suit concerning those properties, there must be allegations showing some legally or equitably enforceable interest of those persons in the properties. The Bishops in this case allege no such interest. They are not typical of the membership of the Church. That membership is of three classes and they are but one class (R. 61-62). The Bishops not only allege no interest in the property, but, as a matter of fact, they individually and as a class have no interest, legal or equitable, in any funds, save a fund held in the State of Tennessee and administered by Trustees residing there (R. 68).

4. Vague general allegations of enormous property

owned by the Church through corporations, trusts, etc., does not give to members of the Church who are not officers or directors of the corporations or trustees of the funds, or beneficiaries, the right to sue concerning those properties. A suit concerning such corporate and trust funds must be brought by persons who claim a legal or equitable interest therein.

5. The value of property or essential rights therein cannot be considered for the purpose of jurisdiction, unless the property which thus becomes the subject matter of the suit is alleged, i.e. described so as to identify it.

6. The statement that the name of a religious society has a certain value and that its use by others will injure the respondent Bishops who no longer use the name, does not properly allege jurisdiction.

7. Allegations of an injury to the "good will" of a religious society, of unfair competition with it, and the loss of possible members and contributions do not properly allege jurisdiction.

8. The Complaint in the instant case presents no controversy that can be measured in terms of money.

9. A civil court cannot consider an ecclesiastical question, unless the consideration thereof is essential to the determination of a property right. Here no cognizable property right is alleged and, accordingly, the Complaint presents a purely ecclesiastical question.

WHEREFORE, your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 4876, *Clare Purcell, et al. v. S. J. Summers, et al.*, and that said decree of said Circuit Court may be reversed by this Honorable

Court, and that your Petitioners may have such other and further relief as in the premises and to this Honorable Court may seem meet and just, and your Petitioners will ever pray; etc.

COLLINS DENNY, JR.,

C. T. GRAYDON,

Counsel for Petitioners.

Supreme Court of the United States

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RESPONDENTS.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fourth Circuit is to be found in 126 F. 2d 390.

II.

JURISDICTION.

1. The statutory provision believed to sustain jurisdiction is Judicial Code, Sec. 240 (a), as amended; U. S. C. Title 28, Sec. 347 (a).

2. The date of the decree to be reviewed is March 9, 1942 (R. 81).

III.

STATEMENT OF THE CASE.

A statement of the case is to be found under heading "C" of the Petition. In the interest of brevity, that statement is not now repeated, but is referred to, with the request that it be considered as here incorporated by reference.

IV.

SPECIFICATION OF ERRORS.

The errors which it is desired to specify are found in paragraphs 3, 4, 5, 6, 7, 8 and 9 of heading "D" in the Petition. Again, in the interest of brevity, we refer thereto and desire, by such reference, to be permitted to incorporate them at this point.

V.

ARGUMENT.

1. *Summary of the Argument.*

Point A. The established principles which determine whether or not a case presents the required jurisdictional amount in controversy.

Point B. The value of the local congregational properties in South Carolina, in connection with which suits are now pending in South Carolina State Courts, cannot be considered in determining whether the required amount is in controversy.

Point C. The Methodist Church, a voluntary association, is incapable of owning property. The value of so called "Church Properties" cannot furnish the required jurisdic-

tional amount in controversy. In order to maintain a suit involving "Church Properties", there must be alleged some judicially cognizable interest in the property, and the property involved must be pointed out with reasonable certainty. Here neither of these is done.

Point D. The allegations that the use by petitioners of the name "Methodist Episcopal Church, South" casts a cloud on the title to millions of dollars of undesignated property cannot support jurisdiction.

Point E. A religious society has no "good will" in the legal sense of that term, cannot be subjected to unfair competition, and the allegations of confusion amid persons who may desire to join a Church and of confusion amid peoples who may desire to make a donation, cannot support jurisdiction.

Point F. The allegations that the use of the name "Methodist Episcopal Church, South", has a value in excess of \$3,000.00, and that its use by petitioners will cause damage to the respondent Bishops in excess of \$25,000.00, cannot sustain jurisdiction.

Point G. This proceeding, in the final analysis, raises a pure ecclesiastical question, over which no court, State or Federal, can take jurisdiction. Jurisdiction exists only if a solution of the ecclesiastical question is necessary to determine some property right, alleged in the Complaint.

2. Point A.

In this proceeding three things are sought: *first*, a declaratory judgment that there has been a legal and valid union between the three churches; *second*, a declaratory judgment that the new Church has succeeded to all the properties and rights of the Methodist Episcopal Church, South, including the exclusive right to the use of its name; and *third*, an injunction against defendants and others similarly situated from using the names "Methodist Episcopal Church, South" or "Southern Methodist Church."

The established principles which determine whether the requisite jurisdictional amount is present in a case of this character, are two in number: *first*, the right which the plaintiff seeks to protect is the matter in controversy; *second*, that right must be one of property, and such that its value may be proved and calculated in the ordinary mode of a business transaction.

The following sustain the first principle: *Hunt v. N. Y. Cotton Exchange*, 205 U. S. 322, 51 L. Ed. 821, 27 Sup. Ct. 529; *Bitterman v. L. & N. R. Co.*, 207 U. S. 205, 52 L. Ed. 171, 28 Sup. Ct. 91, 12 Ann. Cas. 693; *Glenwood Light and Water Co. v. Mutual Etc. Co.*, 239 U. S. 121, 60 L. Ed. 174, 36 Sup. Ct. 30; *Dobie*, Fed. Procedure, p. 133, et seq.

The following sustain the second principle: *Barry v. Mercein*, 5 How. 103, 12 L. Ed. 70; *Perrine v. Slack*, 164 U. S. 452, 41 L. Ed. 510, 17 Sup. Ct. 79; *Horn v. Mitchell*, 243 U. S. 247, 61 L. Ed. 710, 37 Sup. Ct. 293, *Farmers & Merchants Bank, etc. v. Federal Reserve Bank of Richmond*, 274 Fed. 235; *National Lock Co. v. Chicago Regional Labor Board*, 8 Fed. Sup. 820.

The alleged rights which the respondent Bishops seek to protect are: first, the right of The Methodist Church, as successor to the Methodist Episcopal Church, South, to all the properties and rights of the latter; and second, the right of The Methodist Church to the exclusive use of the names "Methodist Episcopal Church, South" and "Southern Methodist Church".

The Complaint, when the nature of a religious society is considered, shows that the Methodist Episcopal Church, South, was possessor of no property rights to which The Methodist Church could succeed and that the Methodist Church is incapable of succeeding to any such rights. The property rights are not alleged, hence did they exist. They cannot be measured in terms of money, and no monetary value can be placed on the name of a religious society or the use thereof.

3. *Point B.*

The Circuit Court of Appeals adopted our view that there was a sufficient identity between the parties to the eight State Cases and the parties to the instant case to bring into play the rule that the jurisdiction of the respective State Courts having attached to the specific *res* in each of the state suits, a Federal Court is precluded from exercising its jurisdiction over those respective properties to defeat or impair the State Court's jurisdiction (R. 79). *Kline v. Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226, 43 Sup. Ct. 79, 24 A. L. R. 1077 is the great authority on this point.

Since a Federal Court can exercise no jurisdiction over these eight properties (which are the only properties that might even remotely be said to be pointed out with reasonable certainty in the Complaint) it follows, apart from other considerations herein set forth, that the value of those properties cannot be considered in determining the question whether the required jurisdictional amount is in controversy.

4. *Point C.*

A denominational church, that is, the great unincorporated religious society, is nothing more than a voluntary association and is, accordingly, incapable as such of owning property—54 C. J. 47, 7 C. J. S. 38, and cases there cited—or of suing or being sued—7 C. J. S. 82. The statements just made, of course, do not apply, if there be a Statute to the contrary. Here there is no such statute. To the same effect see Zollman, *American Church Law*, p. 503.

The religious societies known as "The Methodist Church" and the "Methodist Episcopal Church, South", are incapable of owning property, have never owned property and unless their nature be completely altered will never own any property. Although respondent Bishops allege the owner-

ship by these religious societies of vast amounts of properties, they recognize the truth of this statement and correctly allege that these "Church Properties" are owned by trustees, incorporated boards and other legal instrumentalities. The terms under which those vested with legal title hold, manage and control the several properties and the persons who are the beneficiaries thereof and who, accordingly, have an equitable interest therein, can be ascertained only by reference to the trust instruments, the charters or the documents setting up the instrumentalities.

The Complaint does allege the terms of a trust under which most of the houses of worship are alleged to be held (R. 52). Save for this allegation, the Complaint gives no indication of the nature of any of the charters, trusts or instruments vaguely referred to.

One may not institute a suit unless he has a judicially cognizable interest in the subject matter thereof.

The Bishops, as members of the religious society, have an interest in the question of the name, and if a dispute concerning the right to use it raises the required jurisdictional amount, the Federal Court has jurisdiction over that subject matter. To that point, we shall shortly address ourselves.

But, in the other subject matter of the suit,—the "Church Properties" of the Methodist Episcopal Church, South,—the Bishops allege no judicially cognizable interest whatsoever. They do not allege that they, or any one of them, is a trustee of any trust, a director or official of any corporation, or a member of the governing body of any instrumentality. They do not allege that they, or any one of them, is a beneficiary of any "Church Property" whatsoever, or entitled to the use thereof.

The Court will take judicial knowledge of the fact that many of these so called "Church Properties" are held under very specific terms and for limited purposes and the affidavit of Bishop Denny (R. 61) shows this in some detail.

The Circuit Court of Appeals said (R. 76) :

“* * * plaintiffs (i. e. respondent Bishops) contend that, while legal title to the properties is held by the boards, trustees, commissions and corporations, the right of beneficial use of the properties is in the church organization for the religious and charitable purposes which it has undertaken, and that the right of control over them depends upon the validity of the union into which the three churches have entered, since the trustees, boards, commissions and directors of corporations are appointed by the Church through its proper governing agencies” (R. 76).

We do not find such allegations in the Complaint. The lack of these allegations is controlling, but even if the Complaint can be considered to make these allegations, the allegations of themselves are unsound. The manner of appointing trustees, boards, commissions and directors of corporations is to be ascertained by the instrument establishing the trust, board and commission and by the charter of the corporation, and if respondent Bishops had desired to make any such allegations as this, they would have been required at the least to designate the trust, board, commission or corporation which they had in mind.

The fact that a member of a religious society who wishes to institute suit for the determination of some ecclesiastical question upon which property rights rest, must show an interest in the property of a nature that the Court can consider is fully demonstrated by the cases of *Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed. 77, and *Smith v. Swormstedt*, 16 How. 88, 14 L. Ed. 942. The Circuit Court of Appeals found that the decisions in those cases authorized a suit of the character of the instant case. In so finding we respectfully contend that it misinterpreted those decisions. The latter case grew out of the division of the “Methodist Episcopal Church in America” into the “Methodist Episcopal Church” and the “Methodist Episcopal Church, South”. It involved a par-

ticular fund known as the "Book Concern" which, under the Plan of Division, was to be divided. Suit was brought by certain Southern Commissioners, expressly authorized to take control of that portion of the fund which should go to the Southern Church, and by certain Southern ministers who had personal proprietary and equitable interests in the fund. It was brought against representatives of the Northern Church, who had the fund in their control, and against certain ministers of the Northern Church who had personal proprietary and equitable interests in the fund. The former case specifically involved the right to control, manage and use the properties of "The Board Publication of the Cumberland Presbyterian Church", a Tennessee corporation. It was brought by certain members of the Presbyterian Church in the United States of America, suing for themselves and all other members of the Church *who claimed as such an interest* in the corporate property, against persons who claimed the legal right of possession of the corporate property, and against the corporation itself, for the purpose of removing a cloud upon that property occasioned by virtue of that claim, and for the control of the corporation itself. The instant case is in no sense analogous to either of these cases.

We subsequently refer at some length to the case of *Fussell v. Hail*, 233 Ill. 73, 84 N. E. 42, which is the only case we have been able to find that is at all analogous to the instant proceeding. There the Bill of Complaint was dismissed and, in part, the Court said:

"There is no statement whereby it appears that the complainants, or any of those they represent, have an interest in any property which will be in any way affected by the proposed union".

5. Point D.

Insofar as this suit has a property aspect, it is akin to a proceeding to remove a cloud from title. Indeed, it is alleged

that that which petitioners seek to do "would cast a cloud upon the title to every piece of property held in the name of, or by trustees, for the use of the Methodist Episcopal Church, South, at the time of said Union" (R. 54). But under the allegation of the Complaint, the value of all this undesignated property cannot be considered in ascertaining the existence of the jurisdictional amount, not only for the reasons given in the section above, but also, insofar as the proceeding would otherwise seek to remove clouds on titles, it fails, because in such proceedings, it is necessary not only to aver an interest in the property,—51 C. J. 217—, but it is also necessary that there be pointed out with reasonable certainty the property involved,—51 C. J. 227.

The Complaint points out no property with reasonable certainty, and certain it is that the only properties which are pointed out in any manner whatsoever are the eight pieces of South Carolina real estate, which are the *res* of the eight cases pending in South Carolina courts.

6. *Point E.*

Respondent Bishops have attempted to sustain jurisdiction on allegations of irreparable injury to The Methodist Church, injury to its "good will", unfair competition and confusion amid peoples who may desire to join a church or make a donation thereto.

The mere allegation of an "irreparable pecuniary injury to The Methodist Church" is meaningless from the point of jurisdiction. *Winchester Repeating Arms Co. v. Butler Bros.*, 128 Fed. 976.

Allegations concerning "good will" and "unfair competition" are totally out of place in this proceeding, for a religious society has no "good will" and cannot be subjected to "unfair competition". They are words which express a concept of trade, commerce and business. One of the business corporations which carries on certain of the mundane activities of the church has a good will and might

be subjected to unfair competition, but its good will may be protected, and it may be protected from unfair competition, only if the proceeding be brought by the corporation, or by one who has the right to bring suit for the benefit of the corporation.

All definitions of "good will" show that the term has no meaning save as used in connection with commercial transactions. *Metropolitan Bank v. St. Louis Dispatch Co.*, 149 U. S. 436, 37 L. Ed. 799, 13 Sup. Ct. 944; *In re Borden's Estate*, 159 N. Y. S. 346; 24 Am. Jur. 807.

Similarly "unfair competition" has no meaning outside the commercial field. 26 R. C. L. 875.

Allegations of confusion amid peoples who may desire to join a Church and of those who may desire to make a contribution to a Church, raise simply speculative and conjectural matter, and the question of the jurisdictional amount in controversy cannot be determined by speculation or conjecture. *Farmers and Merchants Bank v. Federal Reserve Bank of Richmond*, *supra*; *Crescent Planing Mill Co. v. Mueller* (Mo. 1938) 117 S. W. 2d 247.

7. Point F.

The Circuit Court of Appeals expressly refers to the allegations that the use of the name "Methodist Episcopal Church, South" has a value in excess of \$3,000.00 and that the damage which will be caused respondent Bishops by the use by petitioners of that name exceeds \$25,000.00 (R. 78). Those allegations are, however, meaningless from the point of jurisdiction, as is clearly shown by *Winchester Repeating Arms Co. v. Butler Bros.*, *supra*. In that case plaintiff sought to protect the name "Winchester", which they alleged was worth in excess of \$5,000.00. The only present or prospective damage alleged was that prospective customers would be deceived and that the reputation of plaintiff and its gun would "suffer irreparable damage". The proceeding was dismissed, the Court saying:

“Had the bill charged that the tradename would be destroyed, then the value of the same would be the amount in controversy. As the matter now stands, the only amount in controversy involved is the amount of complainant’s damages, present and prospective, and they are not stated. I think it clear that the bill shows no jurisdiction in this court”.

As the matter stands in the instant case, the allegations are a cloud on title to properties that are not pointed out and in which respondent Bishops allege no interest, injury to good will, unfair competition, loss of possible membership, loss of possible contributions, and irreparable pecuniary injury.

In connection with the name, there is this very unusual feature. There is no allegation that The Methodist Church makes, or is making any use of the name “Methodist Episcopal Church, South”. If an examination be made of the many proceedings in which associations and corporations have successfully sought to protect a name, it will be found that the name sought to be protected was the name being used, or one so similar thereto as to be confused therewith, or the name by which the association or corporation was generally and popularly known. An instance of the latter is found in *Philadelphia Trust, Safe Deposit and Insurance Company v. Philadelphia Trust Co.*, 123 Fed. 534.

The Plan of Union, which we take it is the charter of The Methodist Church, and which is to be found in the manuscript record, shows the name “Methodist Episcopal Church, South” to have been abandoned.

The name of the new Church is “The Methodist Church” and, according to the theory of respondent Bishops, the three constituent churches went out of existence when it came into existence. The Court will take judicial knowledge of the fact that there are dozens of religious societies in this country using the name “Methodist” and this new Church has no exclusive right thereto. The Court will take judicial knowledge of the fact that the term “Methodist” is

of a type which precludes any group from obtaining the exclusive right thereto. It is a term which for one hundred and fifty years and more has designated those millions of persons who accept the views of John Wesley concerning the relationship which exists between God and man. In like manner, the word "Episcopal", which is not even used by The Methodist Church, is not subject to the exclusive control of any association.

8. *Point G.*

Since no property rights of which the Court may take cognizance are here alleged and sought to be protected, this proceeding resolves itself solely into an attempt by respondent Bishops to obtain a decree from the civil court upon a purely ecclesiastical question—was the Union validly adopted?

While we believe that the chief doctrine of the frequently cited case of *Watson v. Jones*, 13 Wall, 679, 20 L. Ed. 677, is not sound, yet the soundness of the statement in that case to the effect that a civil court has no jurisdiction to consider an ecclesiastical matter, save as civil property rights depend thereon, has, we believe, never been questioned, and cannot be questioned.

The great decision in this country, however, on this point is *Fussell v. Hail*, *supra*, wherein certain members of the Cumberland Presbyterian Church sought to enjoin the General Assembly of that Church from attempting to consummate what they alleged to be a proposed unconstitutional merger of that Church into the Presbyterian Church in the United States of America. The bill alleged that the Cumberland Church owned a large amount of property which would be injuriously affected, and in other respects was quite similar to the Complaint in the instant case. The proceeding was dismissed and the language of the court is so pertinent that we take the liberty of quoting it.

“A court of chancery has no jurisdiction of the subject-matter of this controversy. The object of the bill is to have a court of chancery, by its process, assume control of the action of an ecclesiastical tribunal, declare the extent of its jurisdiction, examine the regularity of its proceedings, and revise its judgments. The civil courts deal only with civil or property rights. They have no jurisdiction of religious or ecclesiastical controversies. Our constitution says: ‘The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed.’ Such freedom of religious profession and worship cannot be maintained if the civil courts may interfere in matters of church organization, creed, and discipline, construe the constitution, canons, or rules of the church, and regulate and revise its trials and the proceedings of its governing bodies. (Citing cases.) *The civil courts afford no remedy for an abuse of ecclesiastical authority which does not violate a civil or property right.* * * *

“The church, as such, owns no property. It has never been incorporated, but is a voluntary association. There are a large number of churches and congregations for whose use property is held in trust, and the bill mentions a number of boards which have property under their control and management. Whether or not these boards are incorporated, except the James Millikan University, which is an Illinois corporation, or *in what way or subject to what trusts the property is held, is not alleged*, except that the property is held for the teaching and preaching of the doctrines contained in the Confession of Faith of the Cumberland Presbyterian Church. There is no allegation setting forth any deed, devise, declaration of trust or gift of any property, or any clause therein or the terms thereof, whereby it can be seen that the proposed union would defeat its purpose. *There is no statement whereby it appears that the complainants, or any of those they represent, have an interest in any property which will be in any way affected by the proposed union.* It is not alleged that any action is proposed to be taken which will interfere with the management and control of the property of the various churches, boards, schools, and

other institutions of the Cumberland Presbyterian Church by the boards of trustees or other managers now in control thereof, and of their successors appointed in accordance with the trusts upon which they are held. We do not find that any property right is directly involved, or can be directly affected by the proposed action of the General Assembly which it is sought to enjoin." (Italics supplied).

VI.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the error of the Circuit Court of Appeals in holding that the District Court had jurisdiction to consider the Complaint in the instant case may be corrected, and that a Writ of Certiorari should be granted, and that this Court should review the decision of the Circuit Court of Appeals and finally reverse it.

Respectfully submitted,

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Counsel for Petitioners.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. [REDACTED] 117

S. J. SUMMERS, ET AL,
Petitioners for Certiorari

vs.

CLARE PURCELL, ET AL,
Respondents to Petition for Certiorari

RESPONSE OF CLARE PURCELL, ET AL, TO
PETITION FOR CERTIORARI WITH
SUPPORTING BRIEF

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1282

S. J. SUMMERS, ET AL,

Petitioners for Certiorari

VS.

CLARE PURCELL, ET AL,

Respondents to Petition for Certiorari

**RESPONSE OF CLARE PURCELL, ET AL, TO
PETITION FOR CERTIORARI WITH
SUPPORTING BRIEF**

PARTIES TO LITIGATION

S. J. Summers, C. E. Gamble, Mrs. A. C. Ashton, Rev. C. P. Chewning, J. M. Hudgins, L. A. Manning, Jr., G. G. Pike, Mrs. S. J. Summers, and Miss Mildred Hudgins, petitioners in this court, were defendants in the United States District Court for the Eastern District of South Carolina, being sued therein as members and representatives of a class known as the "South Carolina Conference of the Methodist Episcopal Church, South," an unincorporated religious society, and were appellees in the Circuit Court of Appeals.

Clare Purcell, William T. Watkins, J. Loyd Decell, Hoyt M. Dobbs, U. V. W. Darlington, Paul B. Kern, William W. Peele and Arthur J. Moore, respondents here, were the

plaintiffs in the District Court, suing as Bishops of The Methodist Church and as members of said church and, as such members, suing as representatives and on behalf of the class composed of all of the members of said church, and were appellants in the Circuit Court of Appeals.

OPINIONS BELOW

The opinion and order of the District Court dismissing plaintiffs' action therein for lack of jurisdiction, dated July 25, 1940, is correctly set forth in the Transcript of Record (R. 24-44) and is published in 34 Federal Supplement, 421. The opinion and order of the Circuit Court of Appeals reversing the judgment of the District Court and remanding the cause, dated March 9, 1942, is correctly set out in the Transcript of Record (R. 74-81).

QUESTION INVOLVED

The sole question here involved is whether the District Court erred in sustaining the defendants' plea to the jurisdiction and in dismissing plaintiffs' action on account of lack of the requisite jurisdictional amount involved or on account of the pendency of certain suits in the Court of Common Pleas of the State of South Carolina.

Relevant portions of plaintiffs' complaint in the District Court, as amended, are set out in pages 3-7 and in pages 52-56 of the Transcript of Record. Defendants' plea to the jurisdiction is correctly set out in the Transcript of Record (R. 21-23).

PRELIMINARY STATEMENT OF THE MATTER INVOLVED

A few months prior to the union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and

the Methodist Protestant Church, which was finally consummated at a Uniting Conference of the three uniting churches held on May 10, 1939, thus forming The Methodist Church, a schism arose between certain members of a local church of the Methodist Episcopal Church, South, at Turbeville, South Carolina, known before the union as the "Pine Grove Methodist Episcopal Church, South," who were opposed to the union and intended to refuse to adhere to the united church, upon the claim that the proposed union would be invalid, and those members of the local church who intended to abide by the action of the churches if union should be consummated and to adhere to the united church. The faction opposed to the proposed union, and in anticipation of its consummation, on the 24th day of April, 1939, caused a deed to be executed attempting to alienate the title to the local church property from the trustees who then held the legal title to it (Paragraph 10 of the complaint in the Pine Grove case; R. 12, 13) with the intent of unlawfully taking sole and exclusive possession of the local church property and to exclude those who adhered to the united church from access thereto and the use and enjoyment of it as a place of divine worship. (Paragraph 13 of the complaint in the Pine Grove case; R. 15.) Those members of the church who intended to adhere to the united church, contended that said alienating deed was unauthorized, was a violation of the trust under which the property was held, and was an unlawful plan and attempt to divert said property from its ownership by the Methodist Episcopal Church, South, and The Methodist Church, its lawful successor in interest. (Par. 14 of the complaint in the Pine Grove case; R. 16, 17.) On the same day on which this alienating deed was made, certain representatives of the faction which caused said alienating deed to be made, served notice on the pastor regularly and duly assigned to said church that they were assuming control and direction of such church property, and warning him not to

trespass upon the church property. (Par. 12 of the complaint in the Pine Grove case; R. 14.) In this situation, those members of the local church who adhered to the united church, on May 29, 1939, filed a bill in the appropriate Court of Common Pleas of South Carolina to cancel the alienating deed, to enjoin the defendants from interfering with the religious services of the pastor duly appointed to said church and to enjoin the use of the name "Methodist Episcopal Church, South," as the name of a church independent of and not affiliated with The Methodist Church, the successor of the Methodist Episcopal Church, South. This action is conceded to be typical of all of the cases pending in the state courts of South Carolina. The plaintiffs in the Pine Grove case are nine in number. Seven of them hold their membership in the Pine Grove Church; three were trustees of the local church property; three were stewards and therefore officers of the local church. One was a plaintiff because of his position of District Superintendent of the district in which the local church is located, and one is a plaintiff by virtue of his position as "preacher in charge of the Pine Grove Methodist Church of Turbeville, South Carolina." These plaintiffs sued on "behalf of themselves and all other members of The Methodist Church similarly situated who have a common or general interest in the subject matter of this suit."

The defendants in the Pine Grove case (the State case) are six persons sued "as members or former members of Pine Grove Methodist Church at Turbeville, South Carolina, in their own right and as representing all other members similarly situated."

The object of the Pine Grove case is (1) to cancel the alienating deed as a cloud upon the title to the local church property, (2) to enjoin interference with the religious ser-

vices at the local church of the duly accredited pastor of The Methodist Church, and (3) to enjoin the defendants from the use of the name "Methodist Episcopal Church, South," or any other name of like import.

The plaintiffs in the Federal suit are all of the members of The Methodist Church as a class, represented by the eight Bishops of the Southeastern Jurisdiction of The Methodist Church. Included in this class are multiplied millions who were never members of the Methodist Episcopal Church, South, but who, by virtue of the union, became members of the united church by reason of their former membership in the Methodist Episcopal Church, commonly known as the Northern Methodist Church, and the Protestant Methodist Church.

The defendants in the Federal suit are not the same persons named as defendants in the State suit nor do they belong to the same class. They are sued as members of a class composed of the membership of the "South Carolina Conference of the Methodist Episcopal Church, South," an unincorporated religious society which did not exist at the time of the filing of the Pine Grove case, formed for the purpose of organizing, propagating and maintaining a church or religious society independent of The Methodist Church, under the name "Methodist Episcopal Church, South," upon the contention that the union of the churches was not valid, and that this religious society organized by them is the true and original Methodist Episcopal Church, South, not affected by the union of the churches, and as such, is entitled to the ownership and beneficial use of all of the properties owned by the Methodist Episcopal Church, South, at the time of the union.

The primary purpose, subject matter and object of the Federal suit is to obtain a binding declaration as to the

rights, duties and obligations of all members of The Methodist Church, or former members of the Methodist Episcopal Church, South; to prevent a multiplicity of suits in reference to local properties scattered over a wide area, and ~~to prevent, by injunctive relief,~~ to deter the filing of further cases by the dissident group composed of the members of the "South Carolina Conference of the Methodist Episcopal Church, South," or the use of the name "Methodist Episcopal Church, South," in their efforts to thwart the purposes of the union of the churches by denying its validity and legal effects.

The right involved in the Federal case is the right of The Methodist Church to own, manage, control and apply to its religious purposes the property owned by the Methodist Episcopal Church, South, at the time of union, alleged, in good faith, to have had a value at the time of union of \$400,000,000; to own, manage, control and apply to its religious purposes the aggregate properties of the united church, alleged to be of a value of \$656,000,000; to protect its property right in the name of one of its constituent churches and to prevent its unauthorized use by an organized group of dissenters in derogation of its property right to such name and in support of its claim that the union of the churches was invalid.

After the filing of the Pine Grove case in the Court of Common Pleas of South Carolina, a mass meeting of those dissenting from the action of the churches in uniting was held at Columbia, South Carolina, in January, 1940, and adopted a provisional plan of organization for the perpetuation of the Methodist Episcopal Church, South, "independent of any other religious society" under the name "South Carolina Conference of the Methodist Episcopal Church, South," and on June 7, 8, and 9, 1940, held a first meeting of said conference for the avowed purpose of organizing, maintaining and extending the membership of a church

or religious society, not affiliated with and independent of The Methodist Church, upon the claim and contention that the union of the Methodist Episcopal Church, South, with the other two uniting churches was invalid and that the Methodist Episcopal Church, South, still existed as a separate religious society unaffected by the actions taken by the uniting churches for effecting the union.

Following these meetings the dissension spread, resulting in the making of alienating deeds and threatened interferences with the religious services in a number of other local churches of the denomination, necessitating the filing of other suits in the state courts of South Carolina, of which the Pine Grove case is typical.

In this situation, and the courts of the State of South Carolina being without authority to grant declaratory judgments, the respondents here filed their suit for a declaratory judgment pursuant to the Federal Declaratory Judgment Act of June 14, 1934 (U. S. C. Title 28, Section 400) the nature, parties and objects of which are hereinabove set out, predicated federal jurisdiction upon (a) diverse citizenship, (b) the existence of an actual controversy and (3) the necessary jurisdictional amount.

The District Court, without consideration of the merits and the exercise of discretion in the grant of a declaratory judgment, dismissed the complaint upon the sole ground that the pendency of the cases in the state courts deprived the Federal Court of jurisdiction. On appeal the Circuit Court of Appeals reversed the judgment of the District Court.

CONTENTIONS OF PETITIONERS FOR CERTIORARI

The petitioners, defendants in the District Court and appellees in the Circuit Court of Appeals, rely on three main

points in contending that the Circuit Court of Appeals erred in reversing the judgment of the District Court:

1. That the state cases were actions *in rem* and the federal court could not, during the pendency of such suits, entertain any suit involving any question which was involved in the state suits.

2. That no jurisdictional amount was involved because there was no sufficient description of the properties claimed by The Methodist Church and because the Methodist Episcopal Church, South, was, and The Methodist Church is an unincorporated society and as such is incapable of owning property.

3. That the complainants have no property interest in the subject matter of the litigation.

Respondents respectfully submit there exists no ground for the grant of the Writ of Certiorari in this case:

1. There was no conflict of jurisdiction between the federal and state courts, because the parties were not the same in the federal and state courts, nor was the cause of action or the relief prayed the same.

2. Because neither the action in the federal court nor the relief prayed for impinge upon the jurisdiction or authority of the state courts to pass any order, or render or enforce any judgment necessary to the complete granting of any relief prayed for in the state cases and any possible encroachment on the jurisdiction of the state courts is precluded by the terms of the judgment of the Circuit Court of Appeals.

3. Because no other adequate remedy than that sought in the federal case was available to respondents, the state courts of South Carolina being without the power to grant the relief of a declaration of their rights prayed for in the federal court.

4. Because a reversal of the judgment of the Circuit Court of Appeals and the consequent affirmance of the judgment of the District Court would nullify the purpose of the Declaratory Judgment Act of Congress to settle the controversy and avoid a multiplicity of suits.

5. Because the reversal of the judgment of the Circuit Court of Appeals and the consequent affirmance of the judgment of the District Court would amount to a holding that the members of a local church of a connectional denomination cannot appeal to a state court to settle a local controversy between two factions in their local church affecting only local property without binding all members of the denomination, including non-residents of the particular state in which the action is filed, of their right to have a declaration of their rights in the federal courts.

6. Because the state courts cannot deprive citizens of other states from having a mere declaration of their rights under the Declaratory Judgment Act of Congress, especially when the same may be had without coercive relief.

7. Because the prayers for injunctive relief in both the state and federal cases are actions *in personam* of which the state and federal courts have concurrent jurisdiction.

8. Because it does not appear that the Circuit Court of Appeals decided the case not in accord with any applicable

decision of this court; contrary to any statute or applicable decision of the courts of South Carolina, or that any other ground exists, recognized by this court as a reason for the grant of the Writ of Certiorari.

WHEREFORE, respondents respectfully submit that the judgment of the Circuit Court of Appeals was correct; that no sufficient ground for the granting of the Petition for Certiorari is assigned, and that the petition therefor should be denied.

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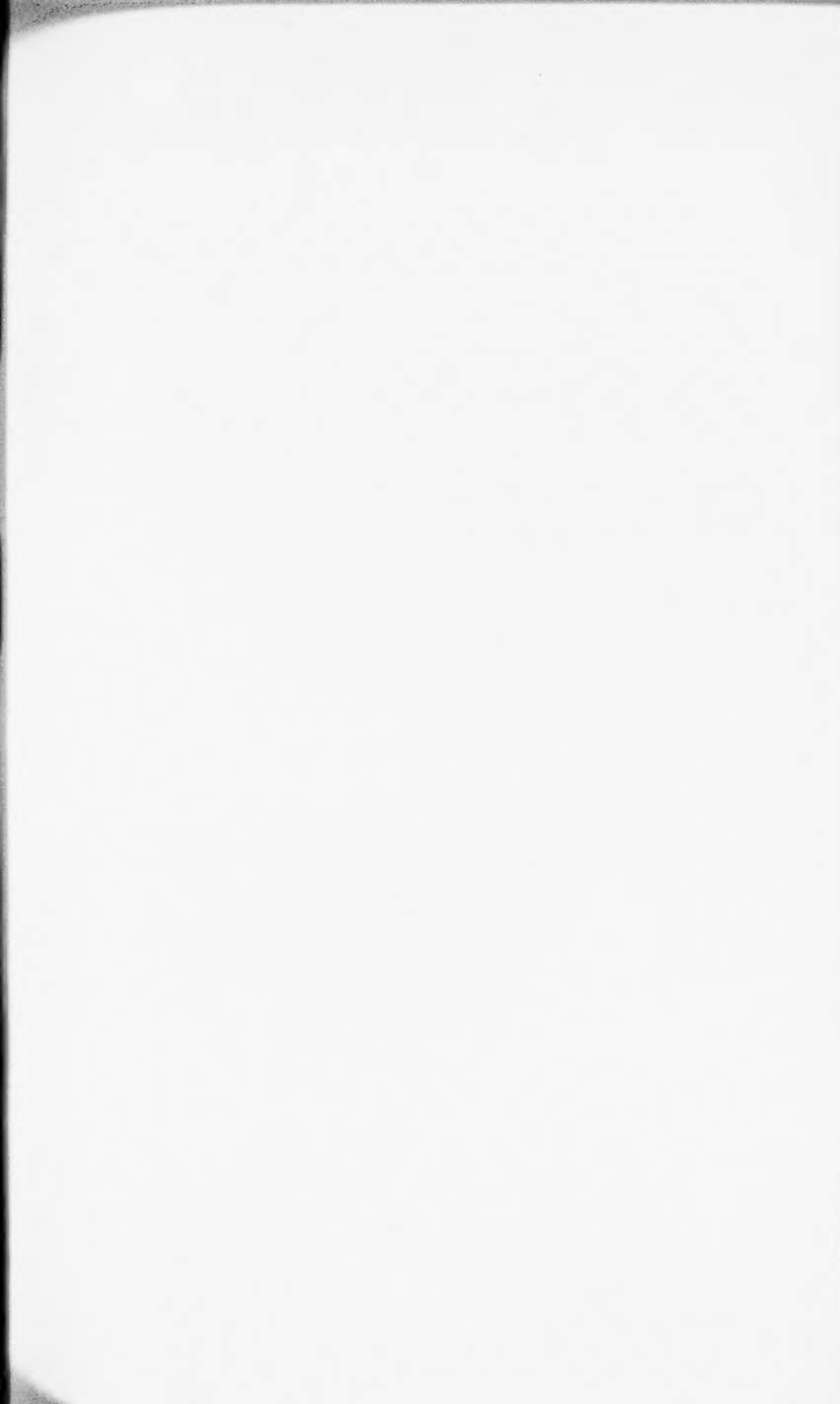
On the brief:

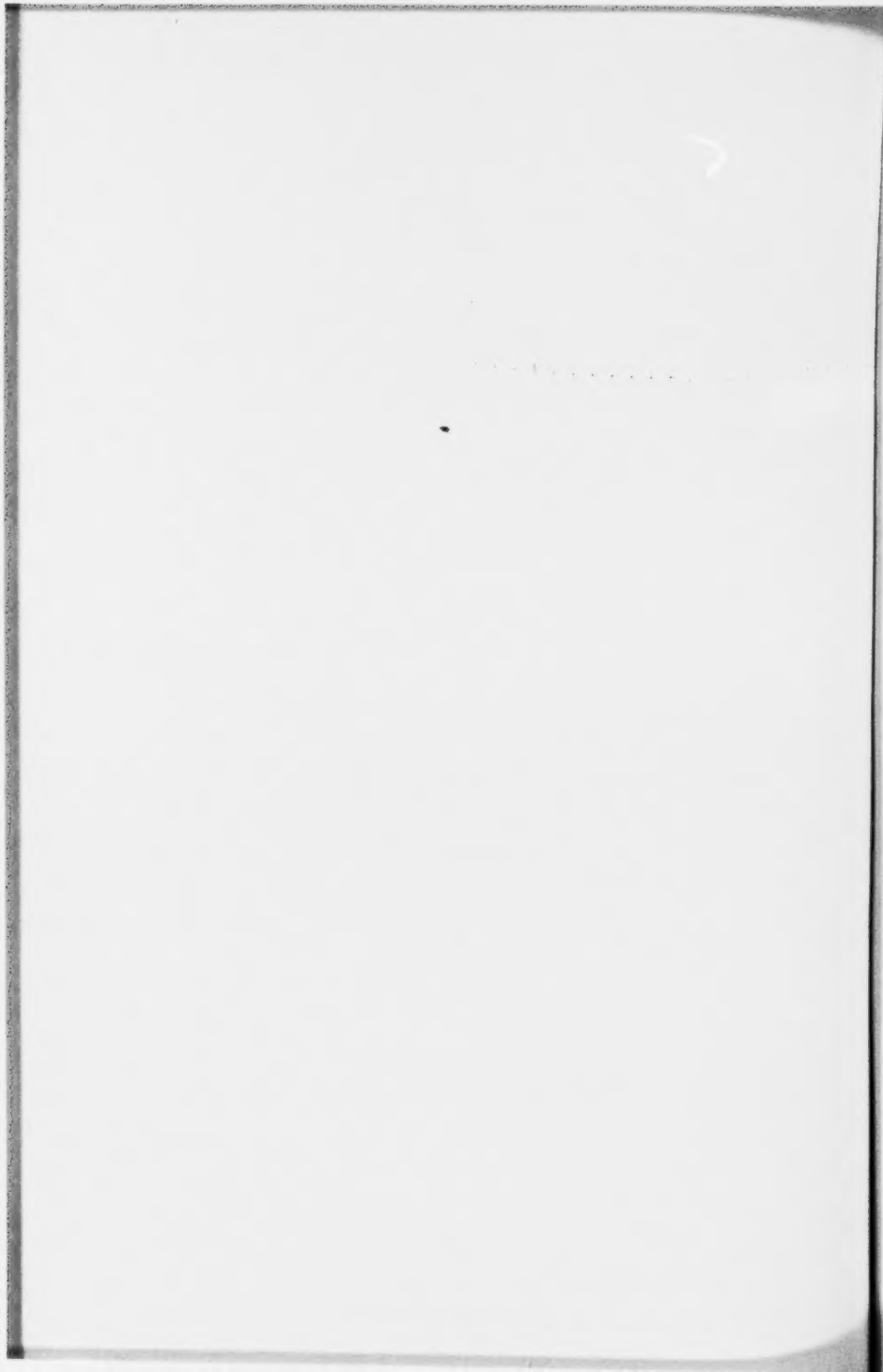
R. T. JAYNES
Walhalla, S. C.

R. E. BABB
Laurens, S. C.

HENRY R. SIMS
Orangeburg, S. C.

ORVILLE A. PARK
Macon, Georgia





SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1941

No. 1282

S. J. SUMMERS, ET AL,
Petitioners,

vs.

CLARE PURCELL, ET AL,
Respondents.

**BRIEF IN OPPOSITION TO THE GRANT OF
WRIT OF CERTIORARI**

I.

THE OPINION OF THE COURT BELOW

1. The opinion of the Circuit Court of Appeals for the Fourth Circuit is to be found in the Transcript of the Record, pp. 74-81, and is published in 126 Fed. 2d, 390.

2. The date of the decision sought to be reviewed is March 9, 1942 (R. 81).

II.

The statutory provision believed to have conferred jurisdiction on the District Court of the United States for the Eastern District of South Carolina to entertain the suit of respondents therein, is the Federal Declaratory Judgment Act of June 14, 1934 (U. S. C. Title 28, Section 400).

III.

Respondents' statement of the case is to be found on pages 2-7 of their response to the Petition for Certiorari herein. In the interest of brevity, that statement is not here repeated, but it is referred to, with the request that it be considered as here repeated by reference.

IV.

SUMMARY OF THE ARGUMENT

1. There is no identity of parties, subject matter or objects to be obtained in the Federal and State cases, and consequently no conflict of jurisdiction.

2. The alleged *in rem* nature of the State cases does not deprive the Federal Court of jurisdiction, the Federal case being an action *in personam*, and especially because the Circuit Court of Appeals protected the State Courts from any possible interference on account of any judgment in the Federal case.

3. The requisite jurisdictional amount was involved in the Federal case, the members of The Methodist Church being the ultimate beneficiaries, uses and equitable owners of all property held by its trustees, boards, commissions or corporations for its use and benefit.

4. No particular description of specific properties was necessary in the Federal case, but if a specific description of any of the properties was necessary there was a sufficient description of sufficient property to overwhelmingly support jurisdiction.

5. The value of the right involved, in good faith alleged to be many times the requisite jurisdictional amount amply supports jurisdiction.

6. The Methodist Church has the equitable right to the exclusive use of the name "Methodist Episcopal Church, South," which is a property right alleged to be of a value more than \$3,000, and the prayers for injunction against its use by the defendants being an action *in personam* and a separable issue in the case, the Federal and State Courts had concurrent jurisdiction even if the parties had been the same.

7. *Fussell v. Hail* distinguished and not a controlling authority on any issue in this case.

8. The Bishops, who are the complainants in the Federal case, were qualified as members of The Methodist Church to sue as the representatives of the membership of the denomination.

9. The legal principles here involved are similar to those presented in *Landrith v. Hudgins*, 121 Tenn. 556 and *Helm v. Zarecor*, 213 Fed. 648, in the latter of which cases it was held that the pendency of the State case did not deprive the Federal Court of jurisdiction.

10. An action between the residents of a single State involving a local property in that State does not deprive the Federal Courts of jurisdiction of an action by non-residents involving rights in property located in all the States, such a suit by non-residents transcends all local controversies.

11. The amplified remedial powers of the Federal Courts under the Federal Declaratory Judgment Act gives jurisdiction to relieve against insecurity, threatened injury and to avoid a multiplicity of suits, and this case is an ideal one for the exercise by the Federal Court of its jurisdiction under the Declaratory Judgment Act.

12. No sufficient grounds for granting the writ of certiorari in this case.

V.

ARGUMENT

1.

CASE CONSIDERED AS TO PARTIES, SUBJECT MATTER AND LEGAL PRINCIPLES INVOLVED

We submit that there was no identity of parties or subject matter in the Federal and State cases, and consequently there could be no conflict of jurisdiction. To prevent unnecessary repetition, we here refer to that portion of the Preliminary Statement of the matters involved in our response to the petition for certiorari in this case, which refers to the parties and subject matters involved in the State and Federal cases (pp. 2 to 7 of the Response).

We submit that the general properties and the conduct of the general work of the denomination were not involved in the State cases, each of the State cases being a purely local case, seeking special relief in a purely local matter.

Respondents respectfully submit that it is obvious that the object of the Federal suit was the protection of the whole denominational structure of The Methodist Church and the protection of the general funds and properties of the united church devoted to its general denominational work.

The question of the validity of union was directly involved in the Federal case and was incidentally but necessarily involved in the State cases, but this constitutes no reason why the cases could not proceed concurrently in the State and Federal Courts. The rule of *Peck v. Jennis*, 7

Howard, 624, and *Freeman v. Howe*, 24 Howard, 450, was early modified by *Buck v. Colbath*, 3 Wall. 334 and by *Watson v. Jones*, 80 U. S. 679, to the extent that the court first acquiring jurisdiction does not necessarily acquire the exclusive right to decide every question involved in the case first filed. *Moran v. Sturgess*, 154 U. S. 256; *Empire Trust Co. v. Brooks*, 232 Fed. 641; *Maryland Casualty Co. v. Board of Water Commissioners*, 27 Fed. (2d) 142.

In *Buck v. Colbath*, 3 Wall. 334, this Court held:

"The rule that among courts of concurrent jurisdiction that the one which first obtains jurisdiction of a case has the exclusive right to decide every question arising in the case is subject to some limitations; and is confined to suits between the same parties, or privies, seeking the same relief or remedy, and to such questions or propositions as arise ordinarily and properly in the suit first brought; and does not extend to all questions which may by possibility be involved in it."

In *Hunt v. N. Y. Cotton Exchange*, 205 U. S. 322, the Court held:

"The fact that defendant has, in another action in the state court, and to which the exchange was not a party, obtained an injunction against the telegraph company, enjoining it from ceasing to deliver the quotations, does not deprive the Circuit Court of jurisdiction of the suit by the exchange under Sec. 720, Rev. Stat., the parties and the purpose not being the same."

The legal principles involved, the cause of action, the relations of the parties and the objectives sought in the case at bar are substantially the same as in the case of *Watson v. Jones*, 80 U. S. 679. The opinion in that case is, in part, as follows:

"In regard to the suit in the chancery court of Louisville, which the defendants allege to be pending, there

can be no doubt but that that court is one competent to entertain jurisdiction of all matters set up in the present suit. As to those matters, and to the parties, it is a court of concurrent jurisdiction with the Circuit Court of the United States, and as between those courts the rule is applicable that the one which has first obtained jurisdiction in a given case must retain it exclusively until it disposes of it by a final judgment or decree.

"But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties or, at least, such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties." * * *

"The pleadings in the present suit show conclusively a different state of facts, different issues, and a different relief sought. This is a case of a division or schism in a church. It is a question as to which of two bodies shall be recognized as the Third or Walnut Street Presbyterian Church. There is a controversy as to the authority of Watson and Gault to act as ruling elders, that authority being denied in the bill of the complainants; and, so far from the claim of Avery, McNaughtan, and Leach to be ruling elders being the sole inquiry in this case, it is a very subordinate matter, and it depends upon facts and circumstances altogether different from those set up and relied on in the other suit, and which did not exist when it was brought. The issue here is no longer a mere question of eldership, but it is a separation of the original church members and officers into two distinct bodies, with distinct members and officers, each claiming to be the true Walnut Street Presbyterian Church, and denying the right of the other to any such claim. This brief state-

ment of the issues in the two suits leaves no room for argument to show that the pendency of the first cannot be pleaded either in bar or in abatement of the second."

In *Helm v. Zarecor*, 213 Fed. 648, the opinion of the Court reads, in part, at page 653, as follows:

"The main issue thus presented by the bill is not, in my opinion, *res adjudicata* by reason of the adjudication in the quo warranto proceedings in the case of *State ex rel. v. W. A. Provine, et al.* Those proceedings were pending in the Chancery Court of Davidson County, Tennessee, when the second plea to the jurisdiction was filed, and were set up and relied upon in said plea. In passing upon this plea in my memorandum opinion of March 26, 1910, I said:

" 'Obviously the bill goes further than to seek merely a decree as to who are the true and lawful members of the corporation, which is the only matter involved in the above named quo warranto proceedings, and seeks a decree broadly declaring the trust upon which the property of the corporation is held, and the use and purpose for which it is to be administered by such persons as may be its true and lawful members.' "

Again in *Helm v. Zarecor*, (U. S.) *supra*, the Supreme Court said:

"The second plea was overruled because it did not reach the whole case made by the bill, as the bill did not merely ask a determination as to the persons who were the true and lawful members of the corporation, which was the only matter involved in the quo warranto proceeding in the state court, but sought a decree declaring the trust upon which the property of the corporation is held and the uses and purposes for which it is to be administered, whoever might be found to be the true and lawful members of the corporation. We need add nothing to what was said by the court below upon these points."

**THE ALLEGED IN REM NATURE OF THE STATE
CASES DID NOT DEPRIVE THE FEDERAL
COURT OF JURISDICTION**

We insist that the District Court, after finding that there was a diversity of citizenship, the requisite jurisdictional amount, an actual controversy and that, if the court had jurisdiction, the Federal case presented a controversy which should be determined under the Declaratory Judgment Act of Congress (R. 81), erred in holding that the parties and the causes of action in the State and Federal Courts were substantially the same and that the cases pending in the State Courts were, as the court construed them, actions *in rem*; and consequently that their pendency deprived the Federal Court of jurisdiction, and for that reason dismissing the action in the Federal Court upon the sole ground of a conflict of jurisdiction between the State and Federal Courts.

Until advised by the decision of the Circuit Court of Appeals, respondents did not consider the actions in the State Courts, whatever their technical classification might be, as such actions *in rem* as precluded the State and Federal Courts of concurrent jurisdiction. In so far as the Pine Grove case, which is typical of all the State cases, sought a removal of a cloud upon the title of the local church property by a cancellation of the alienating deed, respondents construed the action as one *in personam* under the authority of *Hart v. Sanson*, 110 U. S. 151. In so far as the State cases sought injunctive relief against interference with the religious services, and so far as both the Federal and State cases sought injunctive relief against the use by the defendants of the name "Methodist Episcopal Church, South," they were clearly actions *in personam*, and under the rule

in *Kline v. Burke Construction Co.*, 260 U. S. 226, the State and Federal actions could proceed concurrently. But the Circuit Court of Appeals having, by the terms of its decision, limited the District Court only to the "grant of any relief appropriate under the pleadings which will not interfere with the specific properties which have been brought within the jurisdiction of the State Courts," the question of conflict of jurisdiction in this case between the State and Federal Courts has been eliminated.

3.

THE JURISDICTIONAL AMOUNT INVOLVED

The question of a conflict of jurisdiction on account of the *in rem* nature of the State cases being eliminated, diversity of citizenship being admitted, the existence of an actual cognizable controversy not being controverted, the sole remaining attack on the jurisdiction of the Federal Court is the contention that the requisite jurisdictional amount is not involved. Petitioners base this contention, first, upon the contention that The Methodist Church is a voluntary association and, as such, is incapable of owning property.

It is true that the Methodist Episcopal Church, South, was, and The Methodist Church is, an unincorporated, voluntary association. Whatever incapacity may exist by reason of this fact, the members of the Methodist Episcopal Church, South, were, before the union, the ultimate beneficiaries, uses and equitable owners of all property, the legal title of which was held by its trustees. The same is true of The Methodist Church. As an illustration of the equitable ownership by the members of the Methodist Episcopal Church, South, the complaint in the Federal case alleged that:

"At the time of the union of the Methodist Episcopal Church, South, with the other two churches, the

value of the property owned by the Methodist Episcopal Church, South, and held by trustees, boards, commissions and other agencies of such church, for its use and benefit, including local churches, parsonages, hospitals, educational institutions and publishing houses, was approximately \$400,000,000.00. The Discipline of the Methodist Episcopal Church, South, contained a provision that every charter, devise, deed or conveyance for any house of worship to be used by said Church should contain a trust clause as follows: 'In trust to be used, kept, maintained and disposed of as a place of divine worship, for the use of the ministry and membership of the Methodist Episcopal Church, South, subject to the Discipline, usage and ministerial appointments, as from time to time authorized and declared by the General Conference of said Church and by the Annual Conference within whose bounds said premises are located.' "

The members of The Methodist Church are alleged to be invested with a like ownership.

We submit that the situation here with reference to the beneficial interest of the members of the denomination in property for carrying on the denominational work of the church is exactly similar to the interest of the Presbyterian Church in the U. S. A., which supported the right of the membership of that church to maintain the case of *Helm v. Zarecor*, 213 Fed. 648; 222 U. S. 32. In *Smith v. Swormstedt*, 16 Howard, 288, growing out of the division of the Methodist Episcopal Church, the existence of a "common property belonging to the ecclesiastical organization" is recognized.

In *Barkley v. Hayes*, 208 Fed. 319, it was held that:

"A member of the Presbyterian Church or of the Cumberland Presbyterian Church, under their form of organization, has no individual ownership in any property of the church which has been purchased by it or conveyed to it for the general use of the congre-

gation or for a general use for religious purposes, nor has the congregation which uses it, but the same is vested in the general church, which through its general assembly has the ultimate power of control, although the conveyance may have been made to the trustees of the particular denomination."

This case, with others consolidated with it, was carried to the Circuit Court of Appeals for the Eighth Circuit, which affirmed the judgment of the District Court and held (222 Fed. 669) that:

"The agreement of union between the Presbyterian Church in the U. S. A., and the Cumberland Presbyterian Church entered into on May 24, 1906, was legal and valid, and *vested the united church with all property rights of the two constituent organizations.*" (Italics ours.)

The judgment of the Circuit Court of Appeals, in *Barkley v. Hayes*, was affirmed by this Court in 247 U. S., p. 1. See also *Brown v. Clark*, 116 S. W. 360.

Respondents respectfully submit that no principle of American law is better established than that the ultimate beneficial ownership of property held by trustees, or by boards, corporations or commissions for holding and administering property for the protection of the denominational work of a connectional church is in the total membership of the denomination.

4.

NO PARTICULAR DESCRIPTION OF SPECIFIC PROPERTIES NECESSARY IN FEDERAL CASE

Notwithstanding the allegation of the complaint in the Federal case that the Methodist Episcopal Church, South, at the time of union owned property of the approximate

value of \$400,000,000 and that The Methodist Church, after the union, owned property of the value of \$656,000,000, petitioners for certiorari contend that these allegations cannot be considered because there is no particular description of the properties owned by these churches, its 139 educational institutions, its 83 hospitals, its 115 homes for children, aged persons and young people. Respondents insist that to require a description of each piece of property owned and a bill of particulars of the securities in which its permanent funds and the endowment of its institutions are invested would be to require an impossibility, and the nature of the case and the Rules of Federal Procedure do not require it. The plaintiffs' complaint in the Federal Court sought a broad declaration of the rights of the members of The Methodist Church in *all* of the property claimed to be owned by reason of the entry of the Methodist Episcopal Church, South, into the union. Respondents' complaint was in opposition to the claim of the defendants to *all* of the property owned by the Methodist Episcopal Church, South, at the time of union. The complaint in the Federal case did not seek to remove a cloud from any specific item of property owned by The Methodist Church, but the declaration of the invalidity of a claim asserted which cast a cloud upon all of it and the prevention of the invasion of its rights in any of it. No better description could be given of its permanent funds than the allegation that they amounted to \$14,132,961.73, and we submit that this definite allegation alone is a sufficient allegation to allege the jurisdictional amount involved.

5.

THE VALUE OF THE RIGHT INVOLVED

Petitioners, in their brief, recognize the established rule that the jurisdictional amount is determined by the value

of the right which the plaintiffs seek to protect in the controversy. In *Board of Trade v. Cella*, 145 Fed. 28, the court held that the Chicago Board of Trade had a property right in the quotations made and posted in its exchange and, in determining the jurisdictional amount, held:

"In a suit to enjoin a threatened or continued commission of certain acts, the amount or value involved, for the purpose of determining the jurisdiction of a federal court is that the value of the right which complainant seeks to protect from invasion, and not the sum he might recover in an action at law for the damage already sustained; nor is he required to wait until it reaches the jurisdictional amount."

We submit that the contentions of the petitioners in this case are controlled adversely to petitioners by the decision of this Court in *Hunt v. N. Y. Stock Exchange*, 205 U. S. 322. That case came to this Court, like the instant case, upon a plea to the jurisdiction of the Federal Court, based upon the contention that the requisite jurisdictional amount was not involved, and upon a plea in bar on account of the pendency of a cause in a state court, believed to involve the same subject matter. The right involved was the right of the exchange to control the distribution of its quotations. The Superintendent of the Exchange testified that the value of the right was determined by the amount paid it by the Western Union Telegraph Company for the exclusive right to receive and transmit to its patrons, qualified to receive them, these quotations, which was the sum of \$13,584 per annum. Hunt, who received these quotations from the telegraph company up to a certain time for a monthly payment of \$25, contended that that sum was the value of the right. His contention was overruled by the lower court, and on appeal to this Court, the lower court was affirmed, this Court holding:

"It is manifest that the injury to the Exchange is not the rate paid by the appellant to the Telegraph Company. The purpose of the suit is to enjoin the appellant from receiving, using or selling, directly or indirectly, the Exchange's quotations or permitting or maintaining any wire to his office over which the quotations are passing, or distributing the quotations, until he shall have acquired the right to receive them either by contract of purchase from the Exchange, or with its consent and approval, from one of the Telegraph Companies authorized to distribute them. In other words, the object of the suit is to keep the control of the quotations by the Exchange and its protection from the competition of bucket shops or the identity of its business with that of bucket shops. And the right to the quotations was declared, as we said in *Board of Trade v. Christie Grain & Stock Company*, to be property, and the Exchange may keep them to itself or communicate them to others. The object of this suit is to protect that right. The right, therefore, is the matter in dispute, and its value to the Exchange determines the jurisdiction, not the rate paid by appellant to the Telegraph Company. The value of the right was testified to be much greater than \$2,000. In *Mississippi & Missouri R. R. Co. v. Ward*, 2 Black, 485, it was decided that jurisdiction is tested by the value of the object to be gained by the bill. To the same effect is *Board of Trade v. Cella Commission Co.*, 145 Fed. Rep. 28. In the latter suit the Chicago Board of Trade obtained a decree restraining the use of its continuous quotations by the Cella Commission Company. It was said that the amount or value of such right is not the sum a complainant might recover in an action at law for the damage already sustained, nor is he required to wait until it reaches the jurisdictional amount. The latter declaration is supported by *Scott v. Donnell*, 165 U. S. 107."

We submit that the right involved in the instant case is the right of The Methodist Church to own, use, occupy, control, manage and receive the proceeds of all of the prop-

erty of which its members are the equitable owners, including the property acquired from the Methodist Episcopal Church, South, by virtue of the union, and to apply the proceeds of its property and the contributions of its members to the religious purposes of the denomination. If no other allegation of a jurisdictional amount were considered, the allegation of the income received by The Methodist Church from its properties and the contributions of its members overwhelmingly supports jurisdiction.

Furthermore, we insist that a bill for a declaratory judgment, being in the nature of a bill *quia timet*, the jurisdictional amount is to be determined by the value of all of the property whose title is threatened.

6.

**EQUITABLE RIGHT OF THE METHODIST CHURCH
TO THE EXCLUSIVE USE OF THE NAME
"METHODIST EPISCOPAL CHURCH, SOUTH"**

Petitioners contend that a religious society has no good will; cannot be subjected to unfair competition; that these words express a concept of trade, commerce and business, and, that there is nothing in the complaint in the Federal case which indicates that The Methodist Church has not abandoned the use of the name "Methodist Episcopal Church, South."

We submit that it is a principle of law and equity universally recognized by the courts that any business organization, church, lodge, fraternal order or society which has adopted a name, operated under it and acquired a good will under its distinctive use, has the exclusive right of the use of such name and the right to prevent its use by another.

The name "Methodist Episcopal Church, South," was and is a property right and passed to its successor, The Methodist Church. Lord Blackburn in *Singer Mfg. Co. v. Loog*, L. R. A. cases, 15-33-1882, cited in *Nims on Unfair Competition and Trade-marks*, page 39, says:

"I think it is settled by a series of cases of which *Hall v. Barrows* is, I think the leading case, that both trade-marks and trade-names are in a sense property, and the right to use them passes with the good will of the business to the successors of the firm that originally established them, even though the name of that firm be changed so that they are no longer strictly correct. This was evidently Lord Collenthams's opinion in *Millington v. Fox*, and I know no authority against it."

In *Nims on Unfair Competition and Trade-marks* (3rd Ed.) page 240, under the title names of "Charitable Corporations," the author says:

"The fact that a corporation is an eleemosynary or charitable one and has no good will to sell, and does not make money, does not take it out of the law of unfair competition. Distinct identity is just as important to such a company, oftentimes, as it is to a commercial company. Its financial credit, its ability to raise funds, and supporting it, are all at stake if its name is filched away by some other organization. The existence of two charitable organizations in one city, or even in one section of the country, both of which have names in which the words "Young Women's Christian Association" appear, could not but be a distinct injury to each other. *International Committee of Young Women's Christian Association v. Young Women's Christian Association of Chicago*, 194 Ill., p. 194, 62 N. E. 551; 56 L. R. A. 888; *Society of the War of 1812 v. Society of War of 1812 in the State of N. Y.*, 46 App. Div. (N. Y.) 568; 62 N. Y. Supp. 355.

"There can be no monopoly in charitable activities. No one should be deprived of the luxury of doing good. But it is, it seems to me, a proper question always of methods. If the methods are improper or unfair, to the harm or detriment of others with established rights, even if the results are meritorious, such methods should be discouraged." Citing *Brooklyn Hebrew Home, etc., v. Jewish Home*, 117 Misc. (N. Y.) 347.

In the *Restatement of the Law of Torts*, by the American Law Institute, in Comment b, under Section 752, it is said:

"Though one having a trade-mark or a trade name discontinues its use with the intention of abandoning it, he does not thereby authorize others to market their goods as his. If the trade-mark or trade name has considerable market reputation, it may continue for some time after the cessation of the use to be regarded in the market as identifying the goods, services or business of the person who discontinued the use. If he remains in business during that period, he is entitled to relief, under the rules stated in this topic, against others who use the trade-mark or trade name in a manner which thus confuses prospective purchasers."

Petitioners evidently construe the union as the annihilation of the "Methodist Episcopal Church, South," and the other churches who entered the union, and that they therefore "quit business" and abandoned their names. The uniting churches did not "quit business," abandon their names, nor were they annihilated by the union.

The principles of law governing the unfair use by one organization of the name of another are so well established that a citation of the authorities herein is not justified, but

a list of a number of such cases is printed in the margin for convenient reference if necessary.*

7.

THE CASE OF FUSSELL V. HAIL DISTINGUISHED

Petitioners rely strongly on the case of *Fussell v. Hail*, 84 N. E. 42. That case is not in any way analogous to the case at bar. That case was an action by members of the Cumberland Presbyterian Church to enjoin its General Assembly from bringing about union with the Presbyterian Church in the U. S. A. The Court held that the object of that suit was to have the court, by its process, take control of an ecclesiastical tribunal, examine the extent of its jurisdiction, examine the regularity of its proceedings and revise its judgments. The object of the instant case is to declare the right of the ecclesiastical bodies which formed the union of the churches for the protection of the property interests of The Methodist Church under the prin-

*Benevolent & Protective Order of Elks v. Improved Benevolent & Protective Order of Elks of the World, L. R. A. (1915 B) p. 1074; Creswill v. Grand Lodge Knights of Pythias of Georgia, 133 Ga., 837; Knights of the Ku Klux Klan v. Independent Klan of America, 11 Fed. (2d) 881; Salvation Army in United States v. American Salvation Army, 120 N. Y. Supp. 741, on page 745; Society of the War of 1812 v. Society of War of 1812 in the State of N. Y., 62 N. Y. Supp. 355, (46 App. Div. 569); Brooklyn Hebrew Home for the Aged v. Brooklyn Hebrew Home for the Aged & Infirm, 192 N. Y. Supp. 301; International Committee of Young Women's Christian Association v. Young Women's Christian Association, Inc., 22 Ohio App. 300; National Circle Daughters of Isabella v. National Order, Daughters of Isabella, 270 Fed. 723; Independent Lodge of the World, Loyal Order of Moose v. Improved Benevolent Protective Order of Moose of the World, 123 At. 532; Talbot v. Independent Order of Owls, 220 Fed. 660; Lane v. Evening Star Society, 100 Ga., 355; Home Machine & Fdy. Co. v. Davis Machine & Fdy. Works, 135 Ga., 18; Industrial Inv. Co. v. Mitchell, 164 Ga., 437; Planters Fertilizer & Phosphate Co. v. Planters Fertilizer Co. (S. C.) 133 S. E. Rep. 706; Hudson Tire Co. v. Hudson Tire & Rubber Co., 276 Fed. 59; Wm. A. Rogers, Ltd. v. H. O. Rogers Silverware Co., 237 Fed. 887.

ciple enunciated in *Watson v. Jones*, 13 Wall. 272; *Shepard v. Barkley*, 247 U. S. 1; first announced in the great South Carolina cases of *Harmon v. Dreher*, 2 Spier's Equity, 87 and *Wilson v. Presbyterian Church of Johns' Island*, 2 Rich. Eq. Rep. 192, followed and approved by the Supreme Court of South Carolina in *Morris Street Baptist Church v. Dart*, 67 S. C. 241.

It is true that the members of a religious society have no individual, proprietary interest in the property of the church to which they belong, but this does not mean that they do not have an equitable interest in the property appertaining to them as members and held in common with all other members of the denomination. When the church to which they belong, by its due processes, exercises its inherent right to unite with another religious society their membership is transferred to the new organization together with all of their equitable interests in the property of the church to which they belong, and they are thereby deprived of no property right. This was the extent of the ruling in *Fussell v. Hail*, *supra*.

In *Barkley v. Hayes*, 208 Fed. 319, involving rights of property claimed by members of the Cumberland Presbyterian Church after the union of that church with the Presbyterian Church in the U. S. A., the District Court for the Western District of Missouri held that:

"A member of the Presbyterian Church or of the Cumberland Presbyterian Church, under their form of organization, has no individual ownership in any property of the church which has been purchased or conveyed for the general use of a congregation or for general use for religious purposes, nor has the congregation which uses it, but the same is vested in the general church, which through its general assembly has the ultimate power of control, although the conveyance may have been to the trustees of the particular congregation.

"A Christian Church, in the absence of anything in its constitution to the contrary, has the inherent power to unite with another church, involving the surrender of the name and organization of one of them, when there is sufficient identity of faith to warrant their union."

This case, with others consolidated with it, was carried to the Circuit Court of Appeals of the Eighth Circuit, which affirmed the decision of the District Court and held (222 Fed. 669) that:

"The agreement of union between the Presbyterian Church in the U. S. A., and the Cumberland Presbyterian Church, entered into on May 24, 1906, was legal and valid, and vested the united church with all property rights of the two constituent organizations."

Appeal was then taken to the Supreme Court of the United States, docketed here as *Shepard v. Barkley*, and affirmed (247 U. S. 1). In these cases there is an almost complete citation of the decisions of the American Courts on this subject. For lack of space these decisions are not herein cited, but reference is prayed to them, if the Court deems it necessary to consider them.

Fussell v. Hail, *supra*, properly understood, did not hold that the members of the Cumberland Presbyterian Church did not have *any* interest in the property of their church, but held that they did not have "*an interest in any property which will be in any way affected by the proposed union.*"

In *Master v. Second Parish of Portland*, 124 Fed. (2d) 622, the court held that:

"Under the Presbyterian system the First Presbyterian Society of Portland held legal title to the real estate but the whole beneficial interest belonged to the general church, not to the particular Park Street congregation."

If *Fussell v. Hail* is not to be understood as we have construed it, it is against the overwhelming weight of authority; is a single decision of a State Court and is not a valid authority on the question involved.

8.

BISHOPS PROPER PARTIES COMPLAINANTS

If it is necessary to be educated in the obvious, as Mr. Justice Holmes once said, we submit that a member of The Methodist Church loses none of his rights as a member by being elected a bishop, nor is he thereby any less qualified to represent the membership as a class in the protection of their rights in the property of the church. Indeed, it is the duty of a bishop to exercise special authority over the spiritual and temporal affairs of the church located within the bounds of his jurisdiction. (R. 31). The complainants in this case were specially authorized to bring this action by a resolution of the Unifying Conference, which represented the entire denomination, in the following terms:

"RESOLVED, that we authorize the Bishops of a jurisdictional conference within which a suit or suits may be brought, if in their judgment it is proper to do so, to employ competent attorneys to protect the interests of The Methodist Church, local or general, in such property, or to cause such suit or suits to be brought as in their judgment may be necessary to protect the interest of The Methodist Church." (R. 32.)

It is obvious that they did not bring their complaint in the District Court to protect any interest in the property of the church peculiar to themselves, but brought it in the interest of all members of the church as a class.

The great case of *Smith v. Swormstedt*, 16 Howard, 288 was brought by certain travelling preachers of the Methodist Episcopal Church, South, by the authority, and under the direction of the general and annual conferences of the

Church, South, and for the benefit of the same, and all the preachers in the travelling connection, and all other ministers and persons having an interest in the property. This court held that the case was properly brought as a class suit.

Barkley v. Hayes, 208 Fed. 319, was brought by the "Moderator and stated clerk, who were respectively Chairman and Secretary of the Presbyterian Church in the United States of America, who acted individually and as such officers and representatives of the members of said Presbyterian Church," against certain members of those who claimed to form the Cumberland Presbyterian Church.

Helm v. Zarecor, 213 Fed. 648, was filed by certain ministers, ruling elders and laymen of the Presbyterian Church in the U. S. A., suing for themselves and all members of said church, against individuals . . . described as representing not only their own interests but also all members of the Cumberland Presbyterian Church.

In *Shannon v. Frost*, 3 Ben Monroe's Rep. (Ky.) 253, it is held "A committee of a church appointed for that purpose, may properly, as parties, litigate the rights of the church in the civil tribunals of the country."

The fact that there may be different orders, duties, dignities and rights among the members of a religious society does not militate against the right of any of the classes of members to sue as representatives of all of the members to protect a right in which they have a common interest.

Prof. Zollman, in his work on American Church Law (page 601), discussing the representation of a total interest of the membership where members of an unincorporated society having a different quantity or quality of interest sue in a representative suit, says:

"That the members of the class have separate and distinct interests is no objection to such a suit, but it is a distinct advantage, as these persons are brought on

the record fairly representing all the rights and interests involved which can thus be fully and honestly tried. (1) A bill, therefore, will not be multifarious because the plaintiffs (the pastor, elders and certain members of the church) are interested in different ways in eliminating a common grievance. (2) The treasurer of such a society (3), its trustees, whether they are elected in the ordinary course by the congregation (4) or are appointed by the court (5), or even its elders and deacons (6) may act as plaintiffs on behalf of the whole membership. The principle even extends to the members of an incorporated synod. (7) Where incorporated societies are members they may fitly be represented in court by individual members. (8) The bill, of course, should be filed not only in behalf of the complainant but also in behalf of all other persons who are not directly made parties, so that they may come under the decree and take the benefit of it, or show that it is erroneous, or may ask for a rehearing (9), and will after it is terminated in a judgment estop the general body from litigating the same matter over again." (10)

1. *Smith v. Swormstedt*, 16 Howard, 288, 303.
2. *Fuchs v. Meisel*, 102 Mich. 357; 60 N. W. 793; *Munsel v. Boyd*, 30 Ohio Cir. Ct. R. 182; *Brown v. Painter*, 3 Northam Co. Rep. (Pa.), 8 Montg. Co. Law Rept. 130.
3. *Smith v. Nelson*, 18 Vt. 511.
4. *Bates v. Houston*, 66 Ga., 198; *Trustees of Methodist Episcopal Church of Jefferson*, 4 Or. 76, 77; *Unangst v. Shortz*, 5 Whart. (Pa.) 506.
5. *Bates v. Houston*, 66 Ga., 198.
6. *Elders and Deacons of First Freewill Baptist Church, etc., v. Bancroft*, 4 Cush. 281.
7. *Trustees of Associated Reformed Church v. Trustees of Theological Seminary at Princeton*, 4 N. J. Eq. 77, 100.
8. *Mannix v. Purcell*, 46 Ohio St. 102; 2 L. R. A. 753.
9. *Whitney v. Mayo*, 15 Ill. 251, 255.
10. *Appeal of Third Reformed Dutch Church*, 88 Pa. 503.

Hence, we insist that, if the bishops had a special interest in the property of the church, this would not have disqualified them from suing as the representatives of all members of the church, but they do not have, and they do not assert any special interest, but they sue for the protection of the common beneficial interest of all members of the church.

9.

THE LEGAL SITUATION HERE PRESENTED

The legal situation presented to the Circuit Court of Appeals in this case was substantially the same as that presented by the state case of *Landrith v. Hudgins* (121 Tenn. 556; 120 S. W. 783), which was a quo warranto proceeding to test the right to hold office as a member of the Board of Publication of the Cumberland Presbyterian Church, this right depending upon the validity of the union of the Cumberland Church with the Presbyterian Church in the U. S. A., and the Federal case of *Helm v. Zarecor* (213 Fed. 618), which was a suit filed in the District Court for the Middle District of Tennessee by members of the Presbyterian Church in the U. S. A. on behalf of themselves and all other members of the Cumberland Presbyterian Church, as representing all members of that church who refused to recognize the union of the churches and claiming that the Cumberland Presbyterian Church was still a separate association with all its original powers . . . for the purpose of obtaining a decree that the united church had become vested with the right to use and control certain property belonging to the Cumberland Church before the union, and to use it in its denominational work. A few days before the Federal case was filed the Supreme Court of Tennessee, in *Landrith v. Hudgins*, held that the union of the churches was not valid. This judgment was pleaded in abatement in the Federal case. The Supreme Court of the United States,

on an appeal of the judgment, in the case of *Helm v. Zarecor*, 222 U. S. 32, held:

"It is thus evident that the controversy transcends the rivalry of those claiming membership in the Board and the assertion of rights inhering in that corporation itself. It embraces the fundamental question of the rights of these religious associations said to be represented by the respective parties to use and control the corporate agency and have same to the benefit of their denominational work of the corporate property. Viewed in this aspect the relation of the corporation to the controversy is not to be determined by the attitude of alleged members of the board who believe the union to have been consummated, nor by the fact it does not appear that they have surrendered possession. These do not suffice to identify the interests of the corporation with that of the complaint."

On a retrial of the case in the Federal Court (213 Fed. 648), the plea in abatement was overruled, and on the petition for rehearing Judge Sanford held:

"I do not think that the entire membership of both the Prèsbbyterian Church in the U. S. A., and the Cumberland Presbyterian Church are shown to have such an interest in the specific church property involved in *Landrith v. Hudgins* as to make that suit properly a class suit binding on members of both churches throughout the United States, or upon any other persons than members of the particular church whose property was in question therein, and in reference to the beneficial ownership of such property.

"Furthermore, the defendants' contention in reference to the effect of the quo warranto proceeding cannot be sustained in the light of the construction placed upon the issues in said quo warranto proceeding in the opinion of the Supreme Court of the United States, in *Helm v. Zarecor*, 222 U. S. 32, and for the reasons heretofore stated in my former opinion."

In the State Court cases involved in the appeal in this case, it is obvious that it was for the protection of a special and local interest in the Pine Grove Church that the plaintiffs in said State Court case filed their action.

On the other hand the plaintiffs in the Federal Court suit sued for the protection of the interests of the whole denomination; that is, that the whole system of church government should remain intact. The members of a local church, as such, have no right or duty to look after the general government and affairs of the church, as a whole, but the bishops acting under the authority of the general conference, and in behalf of all of the members of the denomination, do have that duty and right. We, therefore, insist that a judgment in the *Pine Grove case* would not be res judicata of the issues in the Federal case.

10.

CASE TRANSCENDS ALL LOCAL CONTROVERSIES

Great connectional churches, such as the Presbyterian, Episcopal and Methodist churches, cannot exist as such if they are subject to be broken up by diverse decisions of the courts of different states. They must exist above the civil law and independent of it, or some general rule of law must be found by which the questions affecting the integrity of their organizations are to be adjudicated. Such a general law exists and its exposition is to be found in such cases as, *Watson v. Jones*, 13 Wall. 272, and *Shepard v. Barkley*, 247 U. S. 1; first announced in the great South Carolina cases of *Harmon v. Dreher*, 2 Spier's Eq. 87, and *Wilson v. Presbyterian Church of Johns' Island*, 2 Rich. Eq. Reports, 192, followed and approved by the Supreme Court of South Carolina in *Morris Street Baptist Church v. Dart*, 67 S. C. 241. The Courts of the State of South Carolina being without authority to grant declaratory judgments, cannot ad-

judicate upon questions referable for decision to this general law except when such questions may be incidentally involved in a local contest involving a property right with respect to property located in that state. The Federal Courts under the Declaratory Judgment Act of Congress do have the right to adjudicate directly upon such questions under the circumstances existing when the Federal case involved in this appeal was filed. The necessity of applying general principles of law in cases like this was recognized by Judge Van Valkenburg in *Barkley v. Hayes*, 208 Fed. 320, involving the validity of the union of the Presbyterian Church in the U. S. A. In that case it appeared that in many states the union had been upheld but that the Supreme Court of Missouri in the case of *Boyles v. Roberts*, 222 Mo. 613, had held to the contrary. The learned judge held in *Barkley v. Hayes*, *supra*, that:

"A single decision of the Supreme Court of a state upon a question of property rights growing out of such church union cannot be held conclusive on a federal court as to property in such state in a suit between different parties and involving different property; the question being one of general law *and involving property in all states.*" (Italics ours.)

This case with others consolidated with it was carried to the Circuit Court of Appeals and affirmed (222 Fed. 669), and from the Circuit Court of Appeals to the Supreme Court of the United States, docketed there as *Sheppard v. Barkley*, and there affirmed (247 U. S. 1). We have previously called attention to the fact that the Supreme Court of the United States held, substantially, to the same effect in *Helm v. Zarecor* (213 Fed. 648).

There is nothing in the case of *Erie R. R. Co. v. Tompkins*, 304 U. S. 64, which impaired the right of the Federal Court to decide this case. That case merely gave a new rule

of decision. The rule of decision in this case had already been laid down in the South Carolina cases of *Harmon v. Dreher*, *Wilson v. Presbyterian Church of Johns' Island*, and *Morris Street Baptist Church v. Dart*, *supra*, and by the Supreme Court of the United States in *Watson v. Jones*, *supra*.

The Federal Courts are not yet so manacled that a local dispute over a local matter involving a local interest can deprive eight million people, some of whom reside in every state in the union, of their right to have adjudicated in them a question affecting all of them and which overleaps all state lines.

11.

AMPLIFIED REMEDIAL POWERS OF FEDERAL COURTS UNDER FEDERAL DECLARATORY JUDGMENT ACT

We need hardly mention the fact that all of the cases cited up to this point were decided under the law as it existed before the remedial powers of the Federal Courts were amplified by the Federal Declaratory Judgment Act and their procedure simplified by the existing Rules of Federal Procedure.

Professor Borchard in his work on Declaratory Judgments (Preface to First Edition, XVI) says:

"The general recognition of the declaratory action as a procedural institution has thus opened the door to the adjudication of innumerable complaints and controversies either (a) not theretofore capable of judicial relief, and (b) not theretofore prosecuted except for coercive relief. The first type represents cases in which the petitioner seeks relief from peril and insecurity; the second, cases in which the petitioner is sat-

ified with a mild yet effective remedy, which adequately serves his purpose. The declaration, by narrowing the issue in dispute and by its direct approach to the substantive goal will make unnecessary the persistent abuse of the injunction, now so common, and will afford an effective substitute for many of the more cumbersome and expensive proceedings which now are considered unavoidable."

We respectfully submit that plaintiffs in this case were entitled to a declaration regardless of any prayer for injunctive relief or the right to coercion. When the declaration is made as to the validity *vel non* of union, it must be assumed that no party to the litigation will violate the law as declared and leave undone those things that ought to be done, or do those things which ought not to be done. Mr. Justice Reed, in *Milk Drivers' v. Meadowmoor Dairies, Inc.*, U. S. Law Week, Feb. 10, 1941, 4187, said:

"It is a postulate of reasoned thinking that the judicial decrees will be faithfully carried out."

12.

NO SUFFICIENT GROUND EXISTS FOR GRANTING WRIT OF CERTIORARI

We submit that the existence of a diversity of citizenship, an actual controversy and the requisite jurisdictional amount created Federal jurisdiction, and it was the duty of the District Court to retain jurisdiction and to ascertain, by a consideration of the merits, whether the questions in controversy could be better settled in the Federal or State Courts. *Brillhard v. Excess Insurance Co.*, Law Ed. *Advance Opinions*, U. S. Supreme Court, Vol. 86, No. 15, page 1136.

No one of the reasons assigned in support of the petition for certiorari comes either within the letter or the spirit of

the reasons suggested or foreshadowed by Rule 38, paragraph 5 of the Rules of this Court. There is here no showing that the decision complained of is in conflict with the decision of another Circuit Court of Appeals, on the same matter, or that the court has decided any question of local law in conflict with applicable local decisions or even that the court has decided any question of local law whatsoever. It is not shown that the court has decided an important question of Federal law which has not been but should be settled by this court, or that the decision complained of is in conflict with any applicable decision or decisions of this court. On the contrary, the decision complained of is in harmony with the principles early announced by this court in *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666; *Smith v. Swormstedt*, 16 Howard, 288, 14 L. Ed. 942; *Helm v. Zarecor*, 222 U. S. 32; *Sheppard v. Barkley*, 247 U. S. 1, and is fully justified by the Federal Declaratory Judgment Act. (U. S. C. A. Title 28, Section 400). Furthermore, the granting of the petition, we respectfully submit, would be contrary to many decisions of this Court expressly holding that ordinarily the writ is issued only after a final decree in the Circuit Court of Appeals. For brevity, we refer to the decisions listed in U. S. C. A. Title 28, Paragraph 347, pages 363-364, Note 24, and particularly the following:

"The Supreme Court 'ordinarily refuses a petition for certiorari in the early stages of a case.' *Burget v. Robinson* (Mass. 1903) 123 Fed. 262, 59 C. C. A. 260.

"The writ is ordinarily issued only after a final decree in the Circuit Court of Appeals. *American Constr. Co. v. Jacksonville, etc., R. Co.* (Fla. 1893) 148 U. S. 372, 13 S. Ct. 758, 37 L. Ed. 486; *The Conqueror* (N. Y. 1897) 166 U. S. 110, 17 S. Ct. 510, 41 L. Ed. 937; *Panama R. Co. v. Napier Shipping Co.* (N. Y. 1897) 166 U. S. 280, 17 S. Ct. 572, 41 L. Ed. 1004."

" 'Except in extraordinary cases the writ is not issued until final decree.' *Hamilton-Brown Shoe Co. v.*

Wolf (Mo. 1916) 240, U. S. 251, 36 S. Ct. 269, 60 L. Ed. 629."

" 'This court should not issue a writ of certiorari to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause.' *American Constr. Co. v. Jacksonville, etc., R. Co.* (Fla. 1893) 148 U. S. 372, 13 S. Ct. 758, 37 L. Ed. 486."

Here the mandate of the Circuit Court of Appeals has already been issued and the cause ready for presentation to the District Court. Under Rule 57 of the Rules of Civil Procedure, "the court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar." The very purpose of the act is to provide a remedy at the very inception of differences or controversies, and to avoid multiplicity of suits. Respondents have already been delayed in getting to the merits of this controversy. Petitioners are under no injunction. They are asserting, and can assert, every right and reserve any possible exception in the progress of the litigation, subject to final review by the Circuit Court of Appeals, and this Honorable Court. Petitioners, therefore, will have their day in court on jurisdictional questions and any others arising in the progress of the litigation. No good reason, therefore, has been assigned for the exercise of this court's discretion in granting the petition, and therefore prolonging the litigation. It might be different if the court below had granted the temporary injunction. Thus far, petitioners have not been hurt.

WHEREFORE, respondents submit that the judgment of the Circuit Court of Appeals was correct; that no suf-

ficient ground for the grant of the writ of certiorari is assigned, and that the petition therefor should be denied.

Respectfully submitted,

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I, Collins Denny, Jr., of counsel for petitioners, acknowledged receipt of copy of the foregoing Response of Clare Purcell, et al, with Supporting Brief, this the day of July, 1942.

COLLINS DENNY, JR.,
Of Counsel for Petitioners.